

Message

From: Santell, Stephanie [Santell.Stephanie@epa.gov]
Sent: 2/11/2019 10:06:33 PM
To: Goodin, John [Goodin.John@epa.gov]
CC: Connors, Sandra [Connors.Sandra@epa.gov]
Subject: FW: Quickturn ask for TP review/update re 404G rule and FI assumption effort

Importance: High

FYI

From: Santell, Stephanie
Sent: Monday, February 11, 2019 4:14 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Quickturn ask for TP review/update re 404G rule and FI assumption effort
Importance: High

Allison,

Updated TPs are below, as requested. This latest version was reviewed by both John and Mindy. Please let me know if you have any questions, happy to chat!

Stephanie

CWA 404g - General

* I'd also like to take this opportunity to update you about Clean Water Act Section 404(g) – both the national rulemaking we are undertaking and what we are doing to support Florida and other states.

* First, the Trump Administration remains committed to facilitating state and tribal assumption of the Section 404 permit program under the Clean Water Act (CWA). We believe that by supporting states and tribes to take on this permitting responsibility, greater efficiencies can be achieved in infrastructure and other permitting decisions while continuing to protect the environment.

* As you are aware, EPA has also initiated a rulemaking effort to modernize and clarify the Section 404(g) regulations. This effort is fully underway. The Agency is continuing to move forward with the rulemaking and investigating options to address key issues raised by states and tribes, such as state interest in partially assuming the program.

* From October 2018 through January 2019, EPA actively engaged states and tribes seeking critical pre-rule input on ways EPA can revise the regulations. Tribal webinars were held in November and a meeting was held with states in December.

* We are working toward a proposed rule in 2020.

Florida Assumption:

* It is our understanding that the new Governor is interested in continuing FL's efforts to assume the program. EPA continues to work with FDEP staff on this effort and we are standing by for when FL submits an assumption request package to EPA.

* Current efforts at FDEP include publishing for public comment proposed rules to administer a CWA 404 permitting program. Once signed by the Secretary, a Notice of Proposed Rulemaking (NPR) will be published, initiating a 21-day public comment period followed by seven days for public hearing. These rules need to be finalized prior to submission of an assumption package to EPA.

Background:

- * Under Section 404, a permit is required before dredged or fill material can be discharged into navigable waters or certain wetlands. Infrastructure projects like highways or airports, mining operations, dam or levee construction, or other economic development projects typically require 404 permits.
- * All but a few states now administer the CWA Section 402 permitting program.
- * To date however, only Michigan and New Jersey have assumed administration of the 404 program. The Army Corps retains permitting authority for certain waters in NJ and MI, and the rest of the country and on tribal lands. More than ten states and tribes are currently working toward or investigating the possibility of assuming the 404 program, including Florida, Arizona, Oregon, and Minnesota.
- * As a first step to improving the 404 assumption process for states and tribes, the Army Corps issued a guidance memo on July 30, 2018 clarifying which water bodies the Corps must retain CWA authority over even after a state or tribe assumes the 404 program. This guidance is consistent with the recommendations of 2017 Federal Advisory Committee report on assumable waters.
- * The Army Corps followed its July guidance memo by sending letters to all 50 state governors and leaders of all Federally recognized tribes encouraging them to assume the 404 permitting authority.
- * On September 20, 2018, Acting Administrator Wheeler also sent a message to all state governors and all Tribal leaders regarding EPA's support for assumption. This letter included a helpful checklist so interested states and tribes can understand the process and starting moving toward assumption if that is of interest.
- * EPA has also initiated discussion with the Army Corps, U.S. Fish and Wildlife Service, National Marine Fisheries Service and our other sister agencies to explain the 404 assumption process and each agencies' role during and after a state program is approved and to begin working on clarity regarding specific issues such as the Endangered Species Act.
- * Florida approached EPA in June 2017 expressing interest in assuming the 404 program. EPA is actively engaged with the Florida DEP to facilitate development of a complete assumption package.
- * The effort in Florida has been useful in identifying areas of the regulations that could benefit from added clarity or streamlining. This will assist other states and tribes in their efforts to assume the program.

From: Dennis, Allison

Sent: Monday, February 11, 2019 11:39 AM

To: Santell, Stephanie <Santell.Stephannie@epa.gov>

Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: Quickturn ask for TP review/update re 404G rule and FI assumption effort

Importance: High

Anna will be giving remarks to the Florida League of Cities who are being hosted at the WH tomorrow. She wants to give a status update on the CWA 404G rule and associated Florida assumption effort. Below are some prior TPs we have used to describe each effort. **Is there any way you can review and give me edits NLT 5 pm today so that Anna can review tonight and we can make any needed updates/edits tomorrow morning?** -Allison

CWA 404g - General

- I'd also like to talk about Clean Water Act Section 404 – both the national rulemaking we are undertaking and what we are doing to support Florida and other states.
- First, The Trump Administration is working very hard to support state and tribal assumption of the Section 404 permit program under the Clean Water Act (CWA).

- Under Section 404, a permit is required before dredged or fill material can be discharged into navigable waters or certain wetlands. Infrastructure projects like highways or airports, mining operations, dam or levee construction, or other economic development projects typically require 404 permits.
- By empowering states and tribes to take on this permitting responsibility, greater efficiencies can be achieved in infrastructure and other permitting decisions while continuing to protect the environment.
- We saw that result as EPA began approving delegated state programs for CWA section 402 program, and we expect the same result for section 404 assumption.
- To date however, only Michigan and New Jersey have assumed administration of the 404 program. The Army Corps retains permitting authority for the rest of the country. More than ten states and tribes are currently working toward or investigating the possibility of assuming the 404 program, including Florida, Arizona, and Minnesota.
- As a first step to improving the 404 assumption process for states and tribes, the Army Corps issued a guidance memo on July 30, 2018, clarifying which water bodies the Corps must retain CWA authority over even after a state or tribe assumes the 404 program. This guidance is consistent with the recommendations of a recent Federal Advisory Committee report.
- The Army Corps followed its July guidance memo by sending letters to all fifty State Governors and leaders of all Federally recognized tribes encouraging them to assume the 404 permitting authority.
- On September 20, 2018, Acting Administrator Wheeler also sent a message to all state Governors and all Tribal leaders regarding EPA's support for Assumption. This letter included a helpful checklist so interested states and tribes can understand the process and starting moving toward assumption if that is of interest.
- EPA has also initiated a rulemaking effort to modernize and clarify the Section 404 state assumption process.
- We will be engaging with states, tribes and other stakeholders this fall to gather critical input prior to issuing a proposed rule.

CWA 404g – Florida

- Florida approached EPA in June 2017 expressing interest in assuming the 404 program. EPA is actively engaged with the Florida DEP to facilitate development of a complete assumption package.
- The work we do in Florida will likely be a blueprint for work we do in other states as they pursue 404 assumption.
- EPA has also initiated discussion with the Army Corps, U.S. Fish and Wildlife Service, National Marine Fisheries Service and our other sister agencies to explain the 404 assumption process and each agencies' role during and after a state program is approved.

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